

Cause No. 16-07-07846

JUAN RODRIGUEZ &	§	IN THE COUNTY COURT OF
HACIENDA MIS PADRES MEXICAN	§	
GRILL CORP.	§	
<i>Plaintiff,</i>	§	
 v.	§	MONTGOMERY COUNTY, TEXAS
 EVANSTON INSURANCE COMPANY,	§	
AN ILLINIOS CORPORATION D/B/A	§	
EVANSTON INSURANCE COMPANY	§	
F/K/A ESSEX INSURANCE	§	
COMPANY	§	
D/B/A ESSEX INSURANCE SERVICES	§	
D/B/A ESSEX INSURANCE	§	
SERVICES, INC. AND MARKEL	§	
SERVICE, INCORPORATED,	§	
<i>Defendants.</i>	§	COUNTY COURT AT LAW #2

PLAINTIFFS' FIRST AMENDED PETITION AND
REQUEST FOR DISCLOSURE

COMES NOW, Plaintiffs, **JUAN RODRIGUEZ** and **HACIENDA MIS PADRES MEXICAN GRILL CORP.**, complaining of Defendants, **EVANSTON INSURANCE COMPANY**, **AN ILLINOIS CORPORATION D/B/A EVANSTON INSURANCE COMPANY F/K/A ESSEX INSURANCE COMPANY D/B/A, ESSEX INSURANCE SERVICES D/B/A, ESSEX INSURANCE SERVICES, INC., AND MARKEL SERVICE INCORPORATED** and in support thereof would show the following:

I. DISCOVERY

1. Plaintiffs intend to conduct discovery under Discovery Level 2. The amount in controversy in this case exceeds \$100,000 excluding court costs, prejudgment interest and attorney's fees. Plaintiffs seek monetary relief exceeding \$200,000 but not more than \$1,000,000.

II. PARTIES

2. Plaintiff, HACIENDA MIS PADRES MEXICAN GRILL CORP ("Hacienda"), is a Texas corporation doing business in Harris County, Texas.
3. Plaintiff, JUAN RODRIGUEZ, is an individual and owner of real property located at 5104 Highway 105 W., Conroe, Texas, the Property subject of this suit.
4. Defendant EVANSTON INSURANCE COMPANY, AN ILLINOIS CORPORATION D/B/A EVANSTON INSURANCE COMPANY F/K/A ESSEX INSURANCE COMPANY D/B/A, ESSEX INSURANCE SERVICES D/B/A, ESSEX INSURANCE SERVICES, INC. ("Essex") is a foreign company doing business of insurance in the state of Texas. This Defendant may be served with process by serving its registered agent in the State of Texas whose name and address is as follows:

Evanston Insurance Company, An Illinois Corporation d/b/a Evanston Insurance Company f/k/a Essex Insurance Company d/b/a, Essex Insurance Services d/b/a, Essex Insurance Services, Inc.
Ten Parkway North
Deerfield, Illinois 60015
c/o the Commissioner of the Texas Department of insurance
at 333 Guadalupe, Austin, Texas 78701.

5. Defendant MARKEL INCORPORATED services Evanston f/k/a Essex's obligation to pay costs of defense under its policies of liability insurance. Markel may be served with process at:

Markel Service, Incorporated
Ten Parkway North
Deerfield, Illinois 60015
c/o the Commissioner of the Texas Department of Insurance at
333 Guadalupe
Austin, Texas 78701-3938

III. VENUE & JURISDICTION

6. Venue for this suit for indemnification is proper in Montgomery County, Texas pursuant to Texas Civil Practice & Remedies Code section 15.002. A substantial part of the events or omissions that give rise to Plaintiffs' claims occurred in Montgomery County.
7. This Court has jurisdiction in this case because the amount in controversy is within the jurisdictional limits of this Court and the Defendant is doing business in the state of Texas.

IV. FACTS

8. Essex issued a policy of Liability Insurance to 3J CONSTRUCTION LLC (3J Construction) to cover the work performed in Conroe for Plaintiffs. (Exhibit A).
9. Defendant's insured, 3J Construction, is a domestic limited liability company doing business in Houston, Harris County, Texas, and has a default judgment rendered against it in the underlying case (Juan Rodriquez & Hacienda Mis Padres Mexican Grill Corp v. Interlink Consortium Corp. d/b/a Link International Design and 3J Construction LLC)(the "underlying case" Exhibit B), in favor of your Plaintiff.
10. Defendant's insured, JOSE GARCIA, Individually and d/b/a JG CONSTRUCTION ("Garcia"), is an individual residing and doing business in Houston, Harris County, Texas and has a default judgment rendered against him in this case. (Exhibit B).
11. Plaintiff is the owner and developer of real property located at 5104 Highway 105 W., Conroe, Texas (the "Property"). On or about June 3, 2013, Plaintiff hired one of the Defendants in the underlying case, Link International Design ("Link"), as general contractor to renovate the Property for the total sum of \$250,000. This amount included complete design and renovation of the restaurant as set forth in the plans and computer renderings provided by Defendant. As the project commenced, Link submitted additional

change orders, bringing the final contract price to \$272,217. Pursuant to draw requests. Plaintiff has paid Link \$276,925 to date.

12. Upon information and belief, Link hired one of the Defendants in the underlying case, 3J Construction and/or Jose Garcia d/b/a JG Construction ("3J") as the project manager and/or primary contractor performing and overseeing all phases of the project. Jose Garcia is the sole member of 3J Construction.

13. 3J's negligence and poor workmanship caused damage to the Property. 3J designed and constructed an addition to the patio of the restaurant but failed to design and install the proper drainage for the patio. This caused water to pool on the patio. Tile and stone installed by 3J fell from the walls and needed to be replaced. When the Plaintiff hired another contractor to complete and repair 3J's work, additional damage and poor workmanship was discovered.

14. Plaintiffs filed suit in the 129th District Court of Harris County, Texas against Defendant's insured, 3J Construction, LLC.

15. 3J Construction LLC and Jose Garcia were served with service on May 22, 2014. (Exhibit D).

16. A default judgment was rendered against 3J Construction LLC and Jose Garcia by the 129th District Court of Harris County, Texas.

17. That judgment was made final when Plaintiff's severed it from the rest of the lawsuit. (Exhibit C).

V. DUTY TO INDEMNIFY

18. Plaintiff incorporates the facts contained in paragraphs 8 through 13 above.

19. Defendant has a duty to satisfy the judgment against its insured, 3J Construction, as 3J has a final judgment against it, and make payment directly to Plaintiff as the judgment holder (Exhibit B & Exhibit C).
20. The general rule in Texas is that injured parties can sue the tortfeasor's insurer directly once a final judgment is secured. See, e.g., *Angus Chemical Co. v. IMC Fertilizer, Inc.*, 939 S.W.2d 138 (Tex. 1997) (per curiam); *Great American Ins. Co. v. Murray*, 437 S.W.2d 264, 265 (Tex. 1969). See, also, *Aviles v. Aguirre*, 292 S.W.3d 648, 649 (Tex. 2009) (per curiam); *State Farm County Mut. Ins. Co. of Texas v. Ollis*, 768 S.W.2d 722, 723 (Tex. 1989) (per curiam).

VI. REQUEST FOR DISCLOSURE

21. Under Texas Rule of Civil Procedure 194, Defendants is requested to disclose, within 50 days of service of this request, the information or material described in Rule 194.2(a) - (I).

VII. PRAYER

22. WHEREFORE, PREMISES CONSIDERED, Plaintiffs pray that the Court grant Plaintiffs a Judgment against Defendants for:

- a. Actual damages in the amount of at least \$165,702.22 plus \$10,000 in attorney's fees as determined by the default judgment;
- b. Pre and post judgment interest;
- c. Such other and further relief, both general and special, at law and in equity, to which Plaintiffs may show themselves to be justly entitled.

Respectfully Submitted,

THE CROMEENS LAW FIRM, PLLC

By: /s/ Christa Boyd

KARALYNN CROMEENS

SBN: 24045726

CHRISTA BOYD

SBN: 24067523

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Houston, Texas 77024

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ATTORNEYS FOR PLAINTIFFS



Access to Impression

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ACCOMPLISHING THE POLICY PROPOSALS.

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For more information on the 2008-09 school year, contact the Office of the Superintendent of Schools at 207-783-5000.

EXHIBIT C

EXHIBIT

Ex-B

8/17/2016 4:38:21 PM
Chris Daniel - District Clerk Harris County
Envelope No. 6530007
By: JONATHAN PATTON
Printed: 8/17/2016 4:39:21 PM

Cause No. 2013-71534

P.1
5a
ATREX

JUAN RODRIGUEZ &
HACIENDA MIS PADRES MEXICAN
GRILL CORP.
Plaintiff

IN THE DISTRICT COURT

v.
INTERLINK CONSORTIUM CORP.
d/b/a LINK INTERNATIONAL
DESIGN, 3J CONSTRUCTION LLC,
And JOSE GARCIA
Defendants

HARRIS COUNTY, TEXAS

128 JUDICIAL DISTRICT

~~INTERLOCUTORY
DEFALKT JUDGMENT~~

At the hearing of this cause, Plaintiff JUAN RODRIGUEZ & HACIENDA MIS PADRES MEXICAN GRILL CORP appeared through their Attorney of Record. Defendants, 3J CONSTRUCTION LLC, and JOSE GARCIA, individually and d/b/a JG Construction, having been duly, legally, and regularly cited and served with process, said Citation with officers return thereon having been on file with the Clerk of this Court for more than ten (10) days exclusive of the date of filing and of this date of signing, failed to appear and wholly made default.

The Court has considered the pleadings, official records on file in this cause, and the evidence and is of the opinion that Judgment should be rendered for Plaintiff.

1. THE COURT ORDERS that Plaintiff JUAN RODRIGUEZ & HACIENDA MIS PADRES MEXICAN GRILL CORP recover from Defendants 3J CONSTRUCTION LLC, and JOSE GARCIA, individually and d/b/a JG Construction, jointly and severally, the sum of \$165,702.22, prejudgment interest on that sum at the annual rate of 5% from the date the lawsuit was filed, post judgment interest on the total sum at the annual rate of 5%, court costs, and attorney fees in the amount of \$25,940.74 for the prosecution of this case.

2. Additionally, Plaintiff is awarded the conditional amount of \$10,000.00 should Plaintiff prevail in any appeal to the Court of Appeals; an additional \$10,000.00 should a Motion for Rehearing or a Petition for Review to be filed in the Texas Supreme Court; and an additional \$10,000.00 should the Texas Supreme Court grant any such Petition for Review.

SIGNED on the 6 of October, 2015.


PRESIDING JUDGE

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RECORDERS MEMORANDUM
This instrument is of poor quality
at the time of recording

EXHIBIT C



Cause No. 2013-71534

3/15/2016 11:16:27 AM
Chris Daniel - District Clerk Harris County
Envelope No. 3145451
By: JONATHAN P. HARRIS
Print: 3/15/2016 11:16:27 AM
Pgs. 1

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IN THE DISTRICT COURT

2013-71534

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HARRIS COUNTY, TEXAS

129th JUDICIAL DISTRICT

JUAN RODRIGUEZ &
HACIENDA MIS PADRES MEXICAN
GRILL CORP.

Plaintiff

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INTERLINK CONSORTIUM CORP.
d/b/a LINK INTERNATIONAL
DESIGN and 3J CONSTRUCTION LLC

Defendant

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ORDER ON PLAINTIFFS' MOTION TO SEVER

On this date was set for submission Plaintiffs' Motion to Sever Plaintiffs' Claims against 3J Construction LLC, thereby allowing the interlocutory default judgment against 3J Construction to become final.

The Court, after considering the motion, and any responses, finds that the Plaintiffs' Motion should be granted. It is hereby ORDERED that the Clerk will docket the severed cause under the new docket number, 2013-71534-A, and transfer to that cause number certified copies of the following: Plaintiffs' Second Amended Petition; Plaintiffs' Motion for Default and this Court's order granting an interlocutory default judgment. Plaintiffs shall bear the costs.

It is therefore ordered that Plaintiffs' Motion is GRANTED, and ORDERED as stated above.

Dated _____

Signed: *Michael Lang*
5/10/2016

Judge Presiding

EXHIBIT C

EXHIBIT

J. A. O.

THE STATE OF TEXAS
CAUSE NO. 2013-71534

HACIENDA MIS PADRES MEXICAN GRILL CORP.
VS.
INTERLINK CONSORTIUM CORP.

IN THE 129TH JUDICIAL
DISTRICT COURT OF
HARRIS COUNTY, TEXAS

AFFIDAVIT

Before me, the undersigned authority, personally appeared JACK ADDISON, JR who swore under oath that the following facts are true and correct:

"My name is Jack Addison, JR. My date of birth is August 14, 1973. I am an authorized private process server in matters pending in the STATE OF TEXAS. IDENTIFICATION NO. SCH 0000901334. Expiration Date 7/31/17.

I am an employee of Action Process.

My business address is P. O. Box 132042, Houston, Texas 77219. (mailing address)

My physical address is 26459 4th Terrace, Splendora, Texas 77372

My business phone is 281 399-1621.

I am not a party to this case, nor am I related to, employed by or otherwise connected to (other than having been retained to serve process in this case) any party or any party's attorney in this case, and I have no interest in the outcome of this lawsuit.

I am over the age of 18 years. I am of sound mind and have never been convicted of a felony or misdemeanor involving moral turpitude.

I received the above styled CITATION CORPORATE on MAY 22, 2014 at 11:17 am

I delivered a copy of the above styled CITATION CORPORATE with PLAINTIFF'S 1ST AMENDED PETITION, REQUEST FOR DISCLOSURE and EXHIBIT A-B attached to:

3 J CONSTRUCTION LLC through registered agent-JOSE GARCIA at 9207 ROCKY VALLEY, HOUSTON, TEXAS 77083 by POSTING a copy at the above address on 8-28-14 @ 11:30 am. according to the ORDER AUTHORIZING SUBSTITUTED SERVICE.

A copy was also mailed by certified mail # 70092250000198916685 on AUGUST 28, 2014. It was not delivered. Print off from Postal Service stated No Authorized Recipient Available. The green card has not been returned.

A copy was sent by regular mail on August 28, 2014. It was not returned.



Jack Addison, JR

BEFORE ME, a notary public, on this day personally appeared, JACK ADDISON who is personally known to me to be the person whose name is subscribed to the foregoing document and being by me first duly sworn, declared under oath that the statements therein contained are true and correct. Given under my hand and seal of office on this 7 day of October 2014.



Notary Public in and for the State of Texas



EXHIBIT C

